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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Appellant,

v.

JAMES LEE INABNIT,

Defendants and Respondents.

C078749

(Super. Ct. Nos. 13F282,
13F7685, 14F1618, &
14F3212)

Defendant James Lee Inabnit entered guilty pleas in four separate matters and was sentenced to an aggregate term of seven years four months in state prison. Several months later, defendant petitioned the trial court for reduction and resentencing in all four cases pursuant to Proposition 47 (Pen. Code, § 1170.18)¹ passed by California voters weeks after he was sentenced. The court granted his petition in two of the cases, but

¹ Undesignated statutory references are to the Penal Code.

denied his petition as to the remaining two, concluding section 1170.18 did not apply to those cases. The court resentenced defendant to the previously imposed term of seven years four months consistent with the plea bargain.

On appeal, defendant contends (1) the trial court erred in denying his Proposition 47 petition for reduction and resentencing of his conviction for receipt of a stolen vehicle (§ 496d), (2) his sentence should be reduced to six years, and (3) the prior prison term enhancements stayed by the trial court pursuant to section 654 should have been stricken. In supplemental briefing, defendant contends, and the People agree, the trial court miscalculated presentence custody credits.

We will affirm the trial court's order denying defendant's Proposition 47 petition to reduce his felony conviction for receipt of a stolen motor vehicle. (§ 496d.) We will remand the matter to the trial court with directions to (1) either impose the prior prison term enhancements previously stayed by the court or strike them and provide a corresponding statement of reasons therefor, and (2) recalculate defendant's presentence custody credits. We will affirm the judgment in all other respects.

PROCEDURAL BACKGROUND²

Case No. 13F282

On January 22, 2013, defendant was charged with possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) The complaint alleged defendant suffered one prior strike conviction. (§ 1170.12.)

On July 11, 2013, defendant entered a negotiated plea of guilty to possession of methamphetamine in exchange for dismissal of the prior strike allegation pursuant to *People v. Harvey* (1979) 25 Cal.3d 754 (*Harvey*).³

² A recitation of the facts underlying defendant's crimes is unnecessary for the resolution of this appeal. Relevant facts will be discussed where pertinent and necessary to the discussion of the issues raised.

The court suspended imposition of sentence, placed defendant on three years of informal probation subject to terms and conditions, and imposed fees, fines, penalties, and assessments.

On August 23, 2013, and again on December 13, 2013, it was alleged defendant violated probation.

Case No. 13F7685

The limited facts taken from the probation report are as follows: On December 3, 2013, defendant “was the driver of a stolen vehicle.” Defendant “admitted he thought the vehicle was stolen, but did not know for sure.”

On December 4, 2013, defendant was charged with possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)--count 1) and receiving a stolen motor vehicle (§ 496d, subd. (a)--count 2). The complaint alleged defendant suffered one prior strike conviction (§ 1170.12) and two prior prison terms (§ 667.5, subd. (b)).

On March 19, 2014, defendant was released on his own recognizance (OR) in case Nos. 13F282 and 13F7685.

Case No. 14F1618

On March 24, 2014, defendant was charged by criminal complaint with second degree robbery. (§ 211.) The complaint alleged defendant suffered a prior strike conviction (§ 1170.12) and three prior prison terms (§ 667.5, subd. (b)), and was armed with a firearm during commission of the offense (§ 12022, subd. (a)(1)).

On April 1, 2014, defendant’s OR status in case Nos. 13F282 and 13F7685 was revoked.

³ The plea agreement included a guilty plea in pending case No. 12CT7268 to driving on a suspended license and dismissal with a *Harvey* waiver of case No. 13F1146 (neither of which is at issue in this appeal), and defendant’s admission that he violated probation in his “misdemeanor cases.”

On April 11, 2014, defendant was charged by first amended complaint with second degree robbery. (§ 211.) The amended complaint alleged defendant suffered a prior strike conviction (§ 1170.12), three prior prison terms (§ 667.5, subd. (b)), a prior serious felony conviction (§ 677, subd. (a)(1)), was armed with a firearm during commission of the offense (§ 12022, subd. (a)(1)), and committed the offense while released on OR (§ 12022.1).

On April 16, 2014, the complaint was again amended to add an additional charge of grand theft. (§ 487, subd. (c).) That same day, defendant entered negotiated pleas as follows: In case No. 14F1618, defendant pleaded guilty to grand theft of a person (§ 487, subd. (c)), and admitted the prior strike and three prior prison term allegations; in case No. 13F7685, defendant pleaded guilty to receiving a stolen motor vehicle (§ 496d, subd. (a)) and admitted the prior strike; and in case No. 13F282, defendant admitted violating probation on two occasions. Defendant entered the pleas in exchange for a stipulated six-year state prison sentence, OR release with a waiver pursuant to *People v. Cruz* (1988) 44 Cal.3d 1247, and dismissal of the prior prison term allegations subject to no *Cruz* violations. Defendant was released on OR pursuant to his plea bargain.

On April 24, 2014, defendant was alleged to have violated probation.

Case No. 14F3212

On June 5, 2014, defendant was charged with possession of a controlled substance. (Health & Saf. Code, § 11377, subd. (a).) The complaint alleged defendant suffered a prior strike conviction (§ 1170.12) and three prior prison terms (§ 667.5, subd. (b)).

On September 15, 2014, defendant entered a negotiated plea of guilty to possession of a controlled substance and admitted the prior strike in exchange for a stipulated state prison sentence of seven years four months (which incorporated the sentence from defendant's prior plea) and dismissal with a *Harvey* waiver of the balance

of charges and allegations against him (including charges in case Nos. 14F2328 and 13TR6797, and alleged probation violations in case No. 13F282).

Sentencing

On October 2, 2014, the trial court sentenced defendant to an aggregate term of seven years four months in state prison comprised as follows:

In case No. 13F7685, the court imposed the low term of 16 months for the violation of section 496d, subdivision (a), doubled for the prior strike;

In case No. 14F1618, the court imposed a term of eight months (one-third the middle term) for violation of section 487, subdivision (c), doubled for the prior strike, plus consecutive one-year terms for two of the prior prison term allegations, and a consecutive one-year term for the third prior prison term, stayed pursuant to section 654;

In case No. 14F3212, the court imposed a term of eight months (one-third the middle term) for violation of Health and Safety Code section 11377, subdivision (a), doubled for the prior strike; and

In case No. 13F282, the court revoked probation and imposed a concurrent two-year term.

The court imposed fees and fines, and awarded presentence custody credit as follows:

In case No. 13F7685, defendant was awarded 63 days of actual custody, plus 62 days of conduct custody, for a total of 125 days of custody credit;

In case No. 13F282, defendant was awarded 63 days of actual custody, plus 62 days of conduct custody, for a total of 125 days of custody credit;

In case No. 14F1618, defendant was awarded 59 days of actual custody, plus 58 days of conduct credit, for a total of 117 days of custody credit; and

In case No. 14F3212, defendant was awarded 49 days of actual custody, plus 48 days of conduct credit, for a total of 97 days of custody credit.

Proposition 47 Resentencing

On February 6, 2015, defendant filed petitions for resentencing (§ 1170.18) in case Nos. 13F282, 13F7685, 14F1618, and 14F3212.⁴ The People conceded resentencing was appropriate in case Nos. 13F282 and 14F3212, but opposed the petition in case No. 14F1618 on the ground that the claim of loss attributable to defendant's violation of section 487, subdivision (c) (grand theft of a person) was \$1,500.

At the February 23, 2015 hearing on defendant's petitions, the trial court granted the petitions as to case Nos. 13F282 and 14F3212 and resentenced defendant to time served "without further need for probation" in those cases. The court continued the hearing on the petitions in case Nos. 13F7685 and 14F1618.

On March 9, 2015, the parties stipulated that the value of the property in case No. 14F1618 exceeded \$950, and the trial court denied defendant's Proposition 47 petition on that ground. The parties disagreed, however, on whether defendant's ultimate sentence was seven years four months or six years.

The trial court concluded section 1170.18 did not apply to case Nos. 13F7685 and 14F1618 and resentenced defendant to an aggregate term of seven years four months as follows: In case No. 13F7685, the court imposed the upper term of three years, doubled for the prior strike; in case No. 14F1618, the court imposed a consecutive eight-month term (one-third the middle term), doubled for the prior strike, and stayed punishment for the three prior prison terms pursuant to section 654.⁵

⁴ The record on appeal does not include the actual Proposition 47 petition for case No. 13F7685. However, the court's minutes and resentencing minute order reflect that the petition was filed on February 6, 2015.

⁵ The transcript reflects the trial court said, "the upper term of six years doubled pursuant to the strike for a total of six." Either the court misspoke or there was an error in transcription, as the aggravated term for a violation of section 496d, subdivision (a) is three years. The transcript also reflects the trial court said, "one third of the midterm of

The court calculated presentence custody credits as follows: In case No. 13F7685, defendant was awarded 61 days of actual custody, plus 60 days of conduct custody, for a total of 121 days of custody credit; in case No. 14F1618, defendant was awarded 57 days of actual custody, plus 56 days of conduct credit, for a total of 113 days of custody credit.

Defendant filed a timely notice of appeal.

DISCUSSION

I

Denial of Proposition 47 Petition

Defendant contends the trial court erred in denying his petition to reduce his felony conviction for violating section 496d, subdivision (a)⁶ to a misdemeanor pursuant to Proposition 47. He claims there was no evidence the vehicle had a value over \$950, in effect making the crime a petty theft within the meaning of section 490.2, a crime eligible for resentencing under Proposition 47. He also contends equal protection requires that section 496d convictions be treated as misdemeanors. As we explain, the claims lack merit.

Background on Proposition 47

“On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act (hereafter Proposition 47), which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).)” (*People v. Rivera* (2015)

eight *years* doubled to one year four months.” (Italics added.) Again, either the court misspoke or there was an error in transcription, as one-third the midterm for a violation of section 487, subdivision (c) is eight *months*.

⁶ A person violates section 496d, subdivision (a), when he or she “buys or receives any motor vehicle . . . that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any motor vehicle . . . from the owner, knowing the property to be so stolen or obtained” (§ 496d, subd. (a).)

233 Cal.App.4th 1085, 1089.) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*Id.* at p. 1091.) Proposition 47 created a resentencing provision, codified at section 1170.18, which provided that “a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. [Citation.]” (*Rivera*, at p. 1092; quoting § 1170.18, former subd. (a).)

As relevant here, Proposition 47 added section 490.2, which defines “petty theft” as follows: “Notwithstanding [s]ection 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of [s]ection 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of [s]ection 667 or for an offense requiring registration pursuant to subdivision (c) of [s]ection 290.” (§ 490.2, subd. (a).)

While this appeal was pending, the California Supreme Court issued its opinion in *People v. Page* (2017) 3 Cal.5th 1175 (*Page*), concluding that section 490.2 includes convictions for vehicle theft under Vehicle Code section 10851 where it is shown the vehicle was worth \$950 or less, but does not apply to convictions for posttheft driving under that code section. (*Page*, at pp. 1180, 1188-1189.) *Page* addressed whether a defendant convicted under Vehicle Code section 10851 was eligible for relief under Proposition 47’s resentencing provision, section 1170.18. (*Page*, at pp. 1179-1180.) With respect to determining whether a Vehicle Code section 10851 conviction was based on vehicle theft, as opposed to posttheft driving, the court instructed: “Where the trial

testimony . . . shows posttheft driving -- that is, driving the vehicle following a ‘substantial break’ after the vehicle had initially been stolen -- the defendant cannot establish eligibility [for resentencing] under section 1170.18 by declaring or testifying that he or she also stole the vehicle: such testimony would not prove the conviction was based on theft rather than on posttheft driving, and therefore would fail to establish that the defendant would only have been guilty of a misdemeanor (petty theft under § 490.2, subd. (a)) had Proposition 47 been in effect at the time of the offense.” (*Page*, at p. 1189, italics omitted.)

As the petitioner in a section 1170.18 proceeding, the defendant bears the burden of establishing his conviction was for theft rather than for unlawful driving. “To establish eligibility for resentencing on a theory that a Vehicle Code section 10851 conviction was based on theft, a defendant must show not only that the vehicle he or she was convicted of taking or driving was worth \$ 950 or less [citation], but also that the conviction was based on theft of the vehicle rather than on posttheft driving [citation] or on a taking without the intent to permanently deprive the owner of possession [citation].” (*Page, supra*, 3 Cal.5th at p. 1188, fn. omitted.)

Proposition 47 Eligibility

First, defendant claims section 490.2 refers to all thefts and does not carve out an exception for vehicles. Therefore, because there is no evidence the stolen vehicle had a value over \$950, in effect making the crime a petty theft within the meaning of section 490.2 and thus eligible for resentencing under Proposition 47, the intent and purpose of Proposition 47 requires inclusion of a section 496d vehicle theft as a felony eligible for reduction. We disagree.

Unlike section 490.2, the crime for which defendant was convicted--section 496d--is a wobbler. That is, it *could have* been punished as either a felony or a misdemeanor. The express language of section 1170.18 makes eligible for reduction only those crimes that “*would have* been . . . a misdemeanor under the act” had it been in effect at the time

of the offense. (§ 1170.18, subd. (a), italics added.) Because Proposition 47 made no attempt to modify the language of section 496d, and thus no attempt to modify the prosecution's ability to charge a violation of that section as a felony, defendant is neither a person who "would have been guilty of a misdemeanor" under section 1170.18, nor eligible for resentencing pursuant to Proposition 47.

Moreover, in light of the well-established axiom that the Legislature may criminalize the same conduct in different ways, we are unwilling to presume, based on the similarities between section 490.2 and section 496d, that the voters intended an explicit grant of relief to those convicted of section 496d but omitted language to that effect or unintentionally rendered Proposition 47 ambiguous.

Next, defendant contends any intent by Proposition 47 "to reduce only vehicle thefts under \$950 per Penal Code section 487, while leaving takings and/or receiving of the same vehicle under Penal Code [section] 496d as felonies" is impermissible under the equal protection clause of the United States and California Constitutions. He argues the protections and relief provided by section 490.2 to "those who actually steal or receive a vehicle valued at or under \$950 . . . must be afforded to one who merely receives possession knowing of the prior theft." The claim is untenable.

"[N]either the existence of two identical criminal statutes prescribing different levels of punishments, nor the exercise of a prosecutor's discretion in charging under one such statute and not the other, violates equal protection principles. [Citation.]" (*People v. Wilkinson* (2004) 33 Cal.4th 821, 838.) It has therefore long been the case that "a car thief may not complain because he may have been subjected to imprisonment for more than 10 years for grand theft of an automobile [citations] when, under the same facts, he might have been subjected to no more than 5 years under the provisions of section 10851 of the Vehicle Code." (*People v. Romo* (1975) 14 Cal.3d 189, 197.) Unless the defendant can show that he "has been singled out deliberately for prosecution on the

basis of some invidious criterion,’ . . . the defendant cannot make out an equal protection violation. [Citation.]” (*Wilkinson*, at p. 839.) Defendant has not made such a showing.

Additionally, in comparing the similarity between sections 496d and 490.2 for equal protection purposes, defendant ignores several key differences. First, section 490.2 is expressly mentioned by and was modified by Proposition 47; section 496d was not. Next, as previously discussed, section 496d is a wobbler; section 490.2 is not. Finally, section 490.2 contains value threshold language not present in section 496d. That is, section 490.2 only applies where the value of the property taken does not exceed \$950. (§ 490.2, subd. (a).) Application of section 496d is not similarly qualified. The question of whether a defendant satisfies Proposition 47 eligibility criteria, which here would include the question of the value of the stolen vehicle, must be answered based solely on the record of conviction. (See *People v. Bradford* (2014) 227 Cal.App.4th 1322, 1338.) The record of conviction does not contain that information. Defendant failed to satisfy his initial burden of proof that his unlawful receipt of a stolen motor vehicle conviction involved a vehicle valued at less than \$950. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450.) In the absence of that initial showing, among other things, defendant cannot demonstrate that, because of his section 496d conviction, he is similarly situated to those who receive relief under Proposition 47 via section 490.2.

In response to our request that the parties explain what, if any, impact the *Page* case has on defendant’s Proposition 47 claim, defendant asserts the *Page* case is not dispositive of the Proposition 47 issue because the case did not discuss section 496d, which is otherwise identified as a theft offense by virtue of its inclusion in Chapter 5 of the Penal Code entitled, “Larceny [Theft],” its similarity to theft crimes as defined by

section 484⁷, and its recognition as such in states other than California. He further asserts that section 496d is not excluded under section 1170.18 simply because it is not included in the list of offenses subject to reduction under section 1170.18 and he is therefore entitled to file a new petition to present evidence of the value of the stolen vehicle.

The People responded that *Page* makes clear that not all violations of section 10851 are eligible for Proposition 47 relief and, in order to establish eligibility for resentencing, a defendant must show not only that the vehicle he was convicted of taking or driving was worth \$950 or less (§ 490.2, subd. (a)), but also that the conviction was based on theft of the vehicle rather than on posttheft driving or on a taking without the intent to permanently deprive the owner of possession. The People argue section 496d criminalizes “buy[ing] or receiv[ing] any motor vehicle . . . that has been stolen or that has been obtained in any manner constituting theft or extortion . . . or . . . conceal[ing], sell[ing], withhold[ing], or aid[ing] in concealing, selling, or withholding any motor vehicle . . . from the owner, knowing the property to be so stolen or obtained.” (§ 496d, subd. (a).) It is therefore not a theft statute because it “criminalizes *buying, receiving, concealing, selling, withholding, or aiding in concealing, selling or withholding*, vehicles that have been stolen or obtained by theft.” Citing the rule that a person cannot be convicted of stealing and receiving the same property (*People v. Garzo* (2005) 35 Cal.4th 866, 875), the People argue it follows that a person convicted of receiving a stolen vehicle has not been convicted of stealing that vehicle. The People argue further that nothing in *Page* indicates Proposition 47’s amendment of section 496 was intended to supersede the provisions of 496d, or that the electorate intended that section 496 operate in the same manner as section 490.2. The People argue that to the extent *Page*

⁷ Section 484 provides, in relevant part, that “[e]very person who shall feloniously steal, take, carry, lead, or drive away the personal property of another . . . is guilty of theft.” (§ 484, subd. (a).)

applies to this case, it undermines defendant's claim because there is no evidence Proposition 47 applies to violations of section 496d. Accordingly, the People argue, defendant is ineligible for relief under Proposition 47.

Defendant's supplemental claims lack merit. We explain.

Defendant was convicted in case No. 13F7685 of *receiving a stolen motor vehicle* in violation of 496d, subdivision (a). Indeed, the basis for the charge against him of receiving a stolen motor vehicle was that he "was the driver of a stolen vehicle" which he thought was stolen but did not know for sure. Receiving a stolen vehicle under section 496d is not one of the offenses listed in section 1170.18 as eligible for resentencing. (See § 1170.18, subd. (a).) While Proposition 47 amended the crime of receiving stolen property (§ 496) so that a case involving property worth \$950 or less is a misdemeanor, it did not amend the statute for receiving a stolen vehicle or list that offense as eligible for resentencing. (See §§ 1170.18, subd. (a), 496, 496d.)

Moreover, defendant did not claim he stole the vehicle, nor was he charged with or convicted of stealing it. As the People aptly argue, a person cannot be convicted of stealing and receiving the same property. (*People v. Garzo, supra*, 35 Cal.4th at p. 875.) Because defendant was convicted of *receiving* a stolen vehicle, he could not be convicted of *stealing* that same vehicle.

Defendant's assertion that section 496d is otherwise identified as a theft offense is unpersuasive. The language of section 496d, subdivision (a) makes plain that the crime is premised not on the actual theft of the vehicle but rather on the acts committed with that stolen vehicle, including driving the vehicle after it was stolen. In any event, the statutory language interpreted in *Page* is not present in the context of receiving stolen property. The statute addressed in *Page*, section 490.2, subdivision (a), includes the words " 'Notwithstanding [Penal Code] Section 487 or any other provision of law defining grand theft . . . ' " (*Page, supra*, 3 Cal.5th at p. 1182.) But there is no equivalent language in the receiving statutes. Proposition 47 applies to certain violations

of Vehicle Code section 10851 because of the broad, preemptive language of section 490.2. Proposition 47 did not enact similar language in the context of receiving stolen property. The lack of such a provision, coupled with the fact that the initiative did not amend section 496d, is dispositive on defendant's section 496d receiving conviction. Proposition 47 does not apply to the crime of receiving a stolen vehicle.

The trial court correctly determined defendant was ineligible for recall of sentence and resentencing pursuant to section 1170.18.

II

Defendant's Sentence

Defendant contends his state prison sentence should be reduced to six years to comport with his plea agreement and the trial court's reduction of his felony conviction in case No. 14F3212 to a misdemeanor pursuant to his Proposition 47 petition. He claims that, because he could not be punished with the additional one-year four-month sentence, his plea agreement should have reverted to the previous agreement of 6 years in prison for all three felony cases.

Background

On April 16, 2014, defendant entered negotiated pleas in case Nos. 14F1618 and 13F7685 in exchange for a stipulated six-year prison sentence and dismissal of the prior prison term allegations.

Thereafter, defendant committed a new crime, for which he was charged on June 5, 2014, in case No. 14F3212.

On September 15, 2014, defendant entered a new negotiated plea in case No. 14F3212 in exchange for a stipulated state prison sentence of seven years four months and dismissal with a *Harvey* waiver of other charges and allegations against him and alleged probation violations. The new sentence incorporated the previous sentence from defendant's prior plea agreement.

On October 2, 2014, the trial court sentenced defendant to an aggregate term of seven years four months in state prison as follows: the low term of 16 months, doubled for the prior strike in case No. 13F7685; eight months (one-third the middle term), doubled for the prior strike, plus a one-year term each for two of the prior prison term allegations, and a one-year term for the third prior prison term, stayed pursuant to section 654 in case No. 14F1618; eight months (one-third the middle term), doubled for the prior strike in case No. 14F3212; and a concurrent two-year term in case No. 13F282.

Thereafter, the trial court granted defendant's petitions for resentencing (§ 1170.18) in case Nos. 13F282 and 14F3212. With respect to case No. 14F1618 and 13F7685, the court indicated the sentence would have to be "rework[ed]" noting, "the People . . . gave up the ability to have [defendant] plead to another strike and more serious offense in exchange for the term." The matter was continued to give the parties time to research the issue.

At resentencing, the following colloquy took place between the court and the parties:

"THE COURT: It was a stipulated 7 year 4 month sentence by the plea. I take that from the plea form from September 15th of 2014. Give me just a minute.

"All right, 7 year 4 month sentence, I believe. That would be--there were strikes admitted in each, right?

"So [case No.] 14F1618 can become the--well, it doesn't matter which becomes the principal term. If we go six years and then a third of the midterm on another case, that would be a 1, 4. So six years and then the 1, 4 would be a 7 year four month sentence.

"[DEFENSE COUNSEL]: Can the Court tell me how we got to 7, 4 originally?

"[PROSECUTION]: I can show [defense counsel] what I have as the--I believe it's a post-sentence report.

“THE COURT: My last abstract doesn’t make any sense at all, unfortunately. It has a series of consecutive terms of eight months, 16 months, and eight months, with a two year concurrent. And that doesn’t do it.

“[PROSECUTION]: And I agree with the Court, we could do six years plus the one year four months, and then just strike the prison priors. The punishment on the prison priors.

“THE COURT: Correct. We can do that. [¶] . . . [¶]

“[DEFENSE COUNSEL]: . . . My request is we follow the same sentencing scheme as last time, without that year and four months, and sentence him to a total of six years with the same sentencing scheme we previously followed.

“[PROSECUTION]: And I would say the People’s response would be that there was a bargain for a sentence of seven years four months.

“[DEFENSE COUNSEL]: There was, but the voters have since decided that we should give people the benefit of those drug possession crimes and no longer adding time to felonies because they are misdemeanors now.

“THE COURT: Well, in this case also, and this was one of the issue[s] that I had and was kind of holding off on but mentioned it to Counsel at least at one of the prior appearances, and that was in order to get to the [section] 487[, subdivision] (c), the People agreed not to go forward with the [section] 211 as a strike.

“[DEFENSE COUNSEL]: True.

“THE COURT: And the stipulation was a seven year four month. And I think that there is probably an issue down the line for these types of sentencings.

“If it is a lid type of sentence and the Court structures it in a particular way, that is, say it was a six year lid and the Court imposed a four year lid and it was based on a number of cases such as we have here, one of which then goes away, generally my thinking on that is that certainly the Court can’t go above the four years it sentenced

originally, but can maintain the four years or can remove time that may have made up the total four years.

“But on a stipulated plea, if we can get to that stipulation, then I am inclined to go with the stipulation.

“[DEFENSE COUNSEL]: If I could have a moment?

“THE COURT: Because that was the agreement.

“[(Defense counsel confers with defendant off the record.)]

“[DEFENSE COUNSEL]: What [defendant] is telling me, and I believe it’s true, there was originally a six year offer. He then picked up the new case, 14F3212, it became a seven year four month offer. That’s the new case that’s now been reduced to a misdemeanor. So, there is a good justice argument that we should be back to the six years.

“In addition, I would, from a legal standpoint, I would say if the Prosecution’s not giving *[sic]* the benefit of their bargain, you could say that about every single Proposition 47 case.

“THE COURT: He had six years before he committed another crime. He wasn’t given, hey, you get six years and get to commit all the crimes you want. And now it’s been made a misdemeanor or not, the wording of the statute doesn’t allow for that. It doesn’t actually tell us what to do in those circumstances at all. So that’s why they need to be reviewed.

“But that argument is not equitable when it comes to how [defendant] behaves. You can’t go out on a six year deal, commit another crime and then come back now and say, well, the voters did something, so you can ignore the fact that I committed another crime.

“Subsequent to the six years, he agreed to a seven year four month deal. So one way or the other, that was the agreement. Had he not committed another crime, we would never have been in this particular situation. All right.”

After further discussion regarding whether defendant committed the crime charged in case No. 14F3212 before or after reaching his initial plea agreement, the colloquy continued:

“THE COURT: I don’t know when the six year deal originally was struck and on which case. It could have been on the 13F7685 case, it could have been on 14F1618. I don’t know when it was.

“The point is, there was a specific agreement that we can still give the People the benefit of, and [defendant] the benefit of, because I do think there is also an argument to be made that if we are going to blow up any part of the deal, he gets less than what he stipulated to, the People should be able to go back in the [14F]1618 case and prove up the robbery. And I don’t think that’s in his best interest either.

“[DEFENSE COUNSEL]: And I don’t think there is any legal mechanism for the People to withdraw their plea.

“THE COURT: Well, I think there is, and it’s something that’s out there. And that is, they have made a bargain, just as [defendant] has made a bargain. Now he wants less time. The People give that up. But he doesn’t want his robbery, which he bargained for a [section] 487[, subdivision] (c), a non-strike, in order to get it in exchange for a number of years.

“If the People can’t get what they want, then he can’t get what he wants in that particular situation. Both agreed to it. We are trying to stick the D.A. with one year four month[s] less. I don’t think that’s fair either. These were the agreements of the parties.

“[PROSECUTION]: And there is also several other cases that were dismissed that I don’t think Prop 47 would even pertain to. So--

“THE COURT: Those were dismissed in exchange for the plea and agreement.

“[PROSECUTION]: Correct.

“THE COURT: I mean, these things can be reviewed. I would like to see some appellate authority eventually on some of these issues. But that, I think, goes back to a

basic principal of plea bargaining being a contract. And if things are given up on both sides, then one can't come back and say, I don't want the benefit--I want the benefits I received, but not the punishment.

“[DEFENSE COUNSEL]: And I think my objections are on the record and we are prepared to proceed with sentencing.

“THE COURT: All right. And I don't know that it matters which of the terms is the principal term on the resentencing. Both admitted a strike. So we will take the first in time, which is [case No.] 13F7685, impose the midterm--I'm sorry, that would be the upper term of [three] years doubled pursuant to the strike for a total of six.

“And then in [case No.] 14F1618, one[-]third of the midterm of eight [months] doubled to one year four months to run consecutively. Both enhancements pursuant to [section] 667.5[, subdivision] (b), punishment there will be stayed. For a total term of seven years and four months.”

Relevant Law

A negotiated plea agreement is a form of contract and is interpreted according to general contract principles. (*People v. Segura* (2008) 44 Cal.4th 921, 930; *People v. Shelton* (2006) 37 Cal.4th 759, 767.) “ ‘ “When a guilty [or nolo contendere] plea is entered in exchange for specified benefits such as the dismissal of other counts or an agreed maximum punishment, both parties, including the state, must abide by the terms of the agreement.” ’ ” (*Segura*, at pp. 930-931.) “ ‘ “Thereafter, material terms of the agreement cannot be modified without the parties' consent.” (*People v. Martin* (2010) 51 Cal.4th 75, 80.)

Proposition 47 “does not otherwise automatically disqualify a petitioner and nothing in section 1170.18 reflects an intent to disqualify a petitioner because the conviction was obtained by plea agreement.” (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 652.)

“[T]he general rule in California is that the plea agreement will be ‘ “deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. . . .” ’ [Citation.] That the parties enter into a plea agreement thus does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them.” (*Doe v. Harris* (2013) 57 Cal.4th 64, 66, 73.) “[E]ven though, as we have explained, California law does not hold that the law in effect at the time of a plea agreement binds the parties for all time, it is not impossible [that] the parties to a particular plea bargain might affirmatively agree or implicitly understand the consequences of a plea will remain fixed despite amendments to the relevant law. [Citations.]” (*Id.* at p. 71.)

Discussion

Defendant contends he first bargained for a six-year term on April 16, 2014, to resolve case Nos. 13F282, 13F7685, and 14F1618. Following his subsequent plea to the charge of drug possession in case No. 14F3212, the parties agreed on September 15, 2014, to a “global disposition of 7 years, 4 months.” Thereafter, the trial court granted his Proposition 47 petition in case No. 14F3212 and resentenced him to time served. He claims the additional one-year four-month term added to his sentence pursuant to the September 15, 2014, plea agreement was solely the result of his plea to the new drug possession charge and, because that conviction was ultimately reduced to a misdemeanor, his sentence should be reduced to the six-year term agreed upon in his April 16, 2014, plea agreement.

The People argue the trial court had discretion, after having reduced the felony in case No. 14F3212 to a misdemeanor, to recalculate defendant’s sentence to arrive at the agreed-upon sentence of seven years four months. The People asserted additional arguments that we need not address because, as we shall explain, we agree that when a

trial court grants Proposition 47 relief for a subordinate term, the court may resentence the defendant on any component of the aggregate term.

When resentencing a defendant in a section 1170.18 proceeding, a trial court's jurisdiction extends to all components of the sentence, not merely those counts reduced to misdemeanors pursuant to the petition. (*People v. Sellner* (2015) 240 Cal.App.4th 699, 701-702 (*Sellner*).)

“When a trial court grants Proposition 47 relief on an eligible felony offense, it resentsences the defendant to a misdemeanor. (§ 1170.18, subd. (b).) Proposition 47 does not limit the court to rigid sentencing options. (See *Sellner, supra*, 240 Cal.App.4th 699; *People v. Acosta* (2016) 247 Cal.App.4th 1072, 1076-1077 (*Acosta*), overruled on other grounds in *People v. Buycks* (2018) 5 Cal.5th 857, 889.) A trial court may reconsider any component underlying the sentence. (*Acosta*, at pp. 1076-1077; see also *People v. Roach* (2016) 247 Cal.App.4th 178, 186; *People v. Rouse* (2016) 245 Cal.App.4th 292, 300 [“The purpose of section 1170.18 is to take the defendant back to the time of the original sentence and resentence him with the Proposition 47 count now a misdemeanor.”’ (italics omitted)].) For example, a trial court may impose six previously dismissed prior prison term enhancements when resentencing a defendant following Proposition 47 relief on another case. (*Acosta, supra*, at pp. 1076-1077.) A trial court may also revisit and impose a harsher punishment on other non-Proposition 47 misdemeanor counts if a defendant is entitled to Proposition 47 resentencing on another count. (*People v. Cortez* (2016) 3 Cal.App.5th 308, 316-317 (*Cortez*).)” (*People v. Mendoza* (2016) 5 Cal.App.5th 535, 538.)

Sellner and *Mendoza* are consistent with the rules governing a trial court's sentencing discretion on remand. “[U]nder principles already elucidated in the case law, the trial judge's original sentencing choices did not constrain him or her from imposing any sentence permitted under the applicable statutes and rules on remand, subject only to the limitation that the aggregate prison term could not be increased.” (*People v. Burbine*

(2003) 106 Cal.App.4th 1250, 1256; accord, *People v. Navarro* (2007) 40 Cal.4th 668, 681.) “When a case is remanded for resentencing [under section 1170, subdivision (d)] by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components. The invalidity of one component infects the entire scheme.” (*People v. Hill* (1986) 185 Cal.App.3d 831, 834; *Burbine*, at pp. 1257-1258.)

At the time defendant entered his second plea, the trial court stated: “And so that you understand the agreement, you’re going to plead to Count 1 [(violation of Health & Saf. Code, § 11377, subd. (a))], admitting the prior strike allegation. This is in [case No.] 14F3212. All other cases that are pending are going to be dismissed, and *together with the other case* [No. 14F1618], there is a stipulation of a 7 year 4 month state prison sentence. . . . [¶] Now, is that your understanding of the agreement?” Defendant responded, “Yes, sir.” (Italics added.)

By filing his Proposition 47 petition, defendant requested that his felony conviction for violation of Health and Safety Code section 11377, subdivision (a) be reduced to a misdemeanor and that he be resentenced accordingly. The trial court’s grant of his petition resulted in reduction of the felony conviction to a misdemeanor. However, section 1170.18 gave the trial court jurisdiction to resentence defendant--to reconsider all other aspects of his aggregate sentence--so long as the court did not impose a sentence greater than the original sentence. That is to say, while the grant of defendant’s Proposition 47 petition entitled him to reduction of his felony offense to a misdemeanor and thus a lesser sentence *as to that charge* (absent a finding of “unreasonable risk of danger to public safety” [§ 1170.18, subd. (b)]), it did not entitle him to a lesser sentence *as to the aggregate sentence* imposed, only to a sentence no greater than that previously imposed.

We conclude the trial court was entitled to exercise its discretion in resentencing defendant to a term not greater than the term of the original aggregate sentence and, in so doing, did not exceed its authority granted by section 1170.18.

III

Unimposed Prison Priors

As part of the first negotiated plea, defendant admitted three prior prison term enhancements (§ 667.5, subd. (b)) in case No. 14F1618. At the original sentencing, the trial court imposed a one-year term each for two of the prison priors, and stayed a third one-year term for the third prison prior. At Proposition 47 resentencing, the trial court stayed punishment for all three prior prison terms. Defendant contends the prior prison term enhancements should have been stricken, not stayed. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241; *People v. Jordan* (2003) 108 Cal.App.4th 349, 368 (*Jordan*) [“Prior prison term enhancements may be imposed or stricken but not stayed”].) He requests that we direct the trial court to strike the prior prison term enhancements accordingly.

The People agree that once a prior prison term allegation is found true, the trial court must either impose a consecutive one-year sentence pursuant to section 667.5, subdivision (b) or exercise its discretion to strike the enhancement pursuant to section 1385 (*People v. Langston, supra*, 33 Cal.4th at p. 1241; *People v. Campbell* (1999) 76 Cal.App.4th 305, 311, overruled on other grounds in *People v. Farwell* (2018) 5 Cal.5th 295, 304), but argue that if the trial court exercises its discretion to strike the allegation, it must provide a statement of reasons therefor. (§ 1385, subd. (a); *Jordan, supra*, 108 Cal.App.4th at p. 368.) The People urge us to remand the matter to the trial court to determine whether or not to impose one of the prison priors and strike the remaining two, or to exercise its discretion to strike all three of the enhancements and provide a statement of reasons therefor.

Defendant argues no statement of reasons was required because punishment for the prison priors was not imposed as part of the plea agreement and, in any event, the People's argument that the trial court failed to state reasons for its sentencing choice cannot be raised for the first time on appeal absent an objection below. (*People v. Gonzalez* (2003) 31 Cal.4th 745, 751-752.)

The rule that a party in a criminal case may not, in the absence of an objection below, raise claims involving the trial court's failure to state reasons for its sentencing choice "does not apply when the sentence is legally unauthorized." (*People v. Gonzalez, supra*, 31 Cal.4th at p. 751.) Here, as the parties agree, section 667.5, subdivision (b) requires that a trial court "impose a one-year term for each prior separate prison term" once that allegation has been found true. Although defendant admitted the prison priors, the trial court stayed punishment as to those allegations. This resulted in an unauthorized sentence that may be corrected by an appellate court even in the absence of an objection or argument below. (*People v. Turner* (2002) 96 Cal.App.4th 1409, 1413-1415.) The People invite us to remand the matter to the trial court to determine whether or not to impose one of the prison priors and strike the remaining two, or to exercise its discretion to strike all three of the enhancements and provide a statement of reasons therefor. We decline to do so. On this record, we conclude the trial court intended to strike the prior prison term enhancements. However, a statement of reasons in the record is required for such action. (*Jordan, supra*, 108 Cal.App.4th at pp. 368-369; *People v. Orin* (1975) 13 Cal.3d 937, 937-944.) Accordingly, we remand the matter to the trial court with directions to either impose the prior prison term enhancements or strike them and provide a corresponding statement of reasons therefor. (*Jordan*, at pp. 368-369; *Orin*, at pp. 937-944.)

IV

Custody Credits

In a supplemental brief, defendant contends the matter must be remanded to correct the trial court's miscalculation of his custody credits to reflect a total of 791 days of credit. He claims the trial court must recalculate actual days and conduct credits for the time he spent in custody prior to sentencing (316 days of actual time plus 316 days of conduct credit for a total of 632 days of presentence custody credit), and must also include the time he spent in prison between the original sentencing and resentencing pursuant to Proposition 47 (159 days).

The People agree the matter must be remanded for recalculation of custody credits, but argue the record is unclear as to the precise number of days defendant spent in custody prior to his original sentencing. Thus, the trial court must first determine the correct arrest and release dates and then recalculate the credits to which defendant is entitled, including credit for the "actual" days he spent in prison after his original sentencing but prior to his Proposition 47 resentencing.

As the People correctly point out, there are a number of instances in the record where the court's minute order reflects either that defendant was present for a particular hearing without referencing that he was also in custody, or that defendant may have been out of custody on OR. We therefore cannot determine from this record the number of actual days defendant spent in custody prior to his original sentencing, nor can we calculate the conduct credits to which he is entitled. We will remand this matter to the trial court for further proceedings to determine the presentence custody credits to which defendant is entitled.

As for credit for time defendant spent in prison between his original sentencing and his Proposition 47 resentencing, both parties rely by analogy on *People v. Buckhalter* (2001) 26 Cal.4th 20 (*Buckhalter*) and *People v. Saibu* (2011) 191 Cal.App.4th 1005 (*Saibu*) for the rule that where, as here, a defendant is resentenced, the sentencing court

In the absence of case law specifically addressing this issue in the context of a Proposition 47 resentencing, we conclude the same principles applied in *Buckhalter* and *Saibu* apply here. As such, defendant is entitled to credit for all actual time spent in prison from the date of his original sentencing (October 2, 2014) through and including the date of resentencing (March 9, 2015), or 159 days.

Defendant's convictions are affirmed. The matter is remanded to the trial court with directions to (1) either impose the prior prison term enhancements previously stayed by the court or strike them and provide a corresponding statement of reasons therefor, and (2) recalculate defendant's presentence custody credits. In all other respects, the judgment is affirmed.

We concur:

Mauro, J.